

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: John Rayson, 954 566 8855

PREPARED BY: Lauren Rice

SUBJECT: Resolution

AFFECTED DISTRICT:

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: AGREEMENT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA APPROVING THE INFRASTRUCTURE IMPROVEMENTS, THE PAYOUT AGREEMENT, AND FUTURE SATISFACTION OF RELEASE OF LIEN FROM THE TOWN OF DAVIE TO THE DAVIE TRAVEL CENTER.

REPORT IN BRIEF: The Davie Travel Center desires to complete infrastructure improvements on their property but has been unable to secure a letter of credit from a bank due to a \$2,000,000.00 lien on the property previously filed by the Town of Davie. The Davie Travel Center and the Town of Davie have engaged in settlement negotiations whereby in exchange for the Davie Travel Center depositing the sum of \$1,162,698.88 plus 10% into John Rayson's attorney trust account, John Rayson has agreed to make payments to the contractors after Robert Ross, Engineer for the Davie Travel Center and the Town of Davie Engineer, Le Nguyen have both certified to John Rayson that the particular stage of work has been completed and should be paid. John Rayson will retain the 10% as a holdback until the job has been fulfilled and all contractors and subcontractors have been paid and a release of lien has been issued. There is no cost to the Town of Davie. The Town of Davie and the Davie Travel Center have agreed that upon completion of the work and payments the Davie Travel Center will file a Dismissal with Prejudice of the lawsuit pending against the Town of Davie brought by the Davie Travel Center, a general release will be executed by the Davie Travel Center in favor of the Town of Davie, and a release of lien from the Town of Davie to the Davie Travel Center will be issued that ensures all matters between the Town of Davie and the Davie Travel Center will be settled.

PREVIOUS ACTIONS:

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

If yes, expected cost: \$

Account name and number:

If no, amount needed: \$

What account name and number will funds be appropriated from:

Additional Comments:

RECOMMENDATION(S): Motion to approve resolution

Attachment(s): Resolution, Settlement Agreement, Cost Estimate, Draw Schedule

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA APPROVING THE INFRASTRUCTURE IMPROVEMENTS, THE PAYOUT AGREEMENT, AND FUTURE SATISFACTION OF RELEASE OF LIEN FROM THE TOWN OF DAVIE TO THE DAVIE TRAVEL CENTER.

WHEREAS, the Davie Travel Center desires to complete infrastructure improvements on their property which costs in excess of \$1.1 million dollars, and;

WHEREAS, the Davie Travel Center has the money to complete the project but has been unable to secure a letter of credit from a bank due to a \$2,000,000.00 lien previously filed by the Town of Davie against the Davie Travel Center property, and;

WHEREAS, the Davie Travel Center and the Town of Davie have engaged in settlement negotiations whereby in exchange for the Davie Travel Center depositing the sum of \$1,162,698.88 plus 10% in the attorney trust account of John C. Rayson, Esq., Town Attorney for Davie, Florida, and;

WHEREAS, John C. Rayson has agreed to make payments to the contractors in accordance with the attached work schedule, and after Robert Ross, Engineer for the Davie Travel Center and Le Nguyen, Engineer for the Town of Davie, have both certified to John C. Rayson that that particular stage of work has been completed and should be paid, and;

WHEREAS, John C. Rayson will retain 10% as a holdback until the job has been fulfilled and all contractors and subcontractors have been paid and issued a release of lien, and;

WHEREAS, there is no cost to the Town of Davie and the Davie Travel Center has agreed to pay any administrative costs to Mr. Rayson for the management of the funds being deposited by the Davie Travel Center, and;

WHEREAS, the Town of Davie and the Davie Travel Center have agreed that upon completion of the work and payments the Davie Travel Center will file a Dismissal with Prejudice of the lawsuit pending against the Town of Davie brought by the Davie Travel Center, a general release will be executed by the Davie Travel Center in favor of the Town of Davie, and the issuance of a release of lien from the Town of Davie to the Davie Travel Center will ensure that all matters between the Town of Davie and the Davie Travel Center will be settled.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF THE TOWN DAVIE, FLORIDA, AS FOLLOWS:

SECTION 1: The Settlement Agreement of the parties herein before mentioned is approved.

SECTION 2: John C. Rayson, Town Attorney is authorized to distribute the deposited funds in seven payments in accordance with the work schedule and upon certification of Robert Ross, Engineer for the Davie Travel Center and Le Nguyen, Engineer for the Town of Davie.

SECTION 3: Upon completion of the project and all stated conditions being met, the Town of Davie will issue a release of lien to the Davie Travel Center and all matters between the Town of Davie and the Davie Travel Center will be settled.

SECTION 4: This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2010

MEMBER
ATTEST:

MAYOR / COUNCIL

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2010

SETTLEMENT AGREEMENT

The Parties to this Settlement Agreement are the DAVIE TRAVEL CENTER whose address is 820 SW 12th Avenue, Pompano Beach, Florida 33069 and the TOWN OF DAVIE whose address is 6591 Orange Drive, Davie, Florida 33325. The Davie Travel Center is the owner of real property located at 4751 SW 30th Street, Davie, Florida 33314. The Parties enter into this Settlement Agreement to resolve a dispute between them concerning a lawsuit pending against the Town of Davie brought on by the Davie Travel Center, completion of infrastructure at the property site, and the release of a lien on the property from Town of Davie to the Davie Travel Center.

1. The Town of Davie previously filed a \$2,000,000.00 lien against the Davie Travel Center Property.

2. The Davie Travel Center desires to complete infrastructure improvements to their property which costs in excess of \$1.1 million dollars. Although the Davie Travel Center has the funds to pay for the improvements they have been unable to secure a letter of credit from a bank due to the lien on the property.

3. The Town of Davie and the Davie Travel Center have agreed that in exchange for the Davie Travel Center depositing the total sum of the infrastructure improvements plus Ten Percent (10%) into the attorney trust account of John C. Rayson, Town of Davie Attorney that John C. Rayson will make payments to contractors once each scheduled stage of work is complete.

4. The payments to contractors will only be made after Robert Ross, Engineer for the Davie Travel Center, and Le Nguyen, Engineer for the Town of Davie, have both certified to John C. Rayson that that particular stage of work has been completed and should be paid.

5. Once all work has been completed and all payments have been distributed the Davie Travel Center will file a Dismissal with Prejudice of the lawsuit pending against the Town of Davie.

6. The Town of Davie will issue a release of lien to the Davie Travel Center.

7. John C. Rayson will retain the Ten Percent (10%) as a holdback until all infrastructure improvements have been completed, all contractors and subcontractors have been paid, the Dismissal with Prejudice has been filed by the Davie Travel Center, and the Town of Davie has issued a release of lien against the Davie Travel Center property.

8. There is no cost to the Town of Davie for this project and the Davie Travel Center has agreed to pay any administrative costs to John C. Rayson for the management of the funds deposited by the Davie Travel Center.

9. Any facsimile or copies of this Agreement shall be treated as an original for all purposes.

10. The representatives of the Town of Davie and of the Davie Travel Center, by their signatures below, attest they have read this Settlement Agreement, have consulted with and considered the advice of counsel, and understand and agree to the terms and conditions of this Settlement Agreement.

NOW THEREFORE, BY THIS STIPULATED SETTLEMENT AGREEMENT, the Parties intend to mutually settle all claims, actions, and causes of action, claims or potential claims existing between them, and acknowledge and agree as follows:

A. Payment. The Davie Travel Center agrees to deposit the sum of \$1,162,698.88 plus Ten Percent (10%) which is equal to \$116,269.88 for a total deposit amount of \$1,278,968.77 into the Attorney Trust Account of John C. Rayson, Town of Davie Attorney.

Payment shall be made immediately after the execution of this Settlement Agreement.

B. Disbursement of Payment. Progress payments will be made after both Robert Ross, Engineer for the Davie Travel Center, and Le Nguyen, Engineer for the Town of Davie have both certified that that phase of the project has been completed by providing a signed and sealed statement of completion to John C. Rayson. Payments will be made in accordance with the following Draw Schedule:

Payment #1: Drainage 50% completion - \$99,631.71

Payment #2: Drainage 100% completion - \$99,631.71

Payment #3: Sanitary Sewer 100% completion - \$58,501.10

Payment #4: Water 100% completion - \$56,088.30

Payment #5: Site Work 30% completion - \$254,653.82

Payment #6: Site Work 60% completion - \$254,653.82

Payment #7: Site Work 100% completion - \$339,538.42

C. Waiver of All Claims and Release. The Davie Travel Center agrees to waive any and all claims it may have regarding the pending lawsuit against the Town of Davie and hereby releases the Town of Davie from any claim for damages, reimbursement or attorneys fees and costs in any way connected with the infrastructure improvements.

D. Dismissal with Prejudice. The Davie Travel Center will file a Dismissal with Prejudice of the pending lawsuit against the Town of Davie.

E. Release of Lien. The Town of Davie will issue a Release of Lien against the Davie Travel Center property once all of the above conditions have been met. Once the Release of Lien has been issued John C. Rayson will release the 10% holdback amount of \$116,269.88 to the Davie Travel Center.

F. Release. The Davie Travel Center hereby releases and forever discharges the

Town of Davie, its Town Council members, Town Manager, Directors, employees, consultants, agents and assigns from any and all claims, actions, causes of action, demands, suits, debts, sums of money, controversies, contracts, and all and any actions or causes of actions in law or equity whatsoever, which they now have or which may hereafter accrue on account of the infrastructure improvements that is the subject of this Settlement Agreement and all transactions or dealings between the Town of Davie and the Davie Travel Center directly or indirectly relating to this matter prior to the date hereof, or any claims made or that could have been made in any lawsuit concerning this matter including all claims, defenses, actions and causes of action against any party arising or resulting from the alleged actions of the Town of Davie.

[Signatures to Follow on Next Page]

By their signatures below the Parties do hereby adopt this Settlement Agreement set forth herein:

by: _____
Town of Davie

Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me, a notary public, this ____ day of _____, 2010, by _____, who is _____ personally known to me or _____ produced _____ as identification.

Notary Public
Print Name: _____

My commission expires:

by: _____
Davie Travel Center

Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me, a notary public, this ____ day of _____, 2010, by _____ who is _____ personally known to me or _____ produced _____ as identification.

Notary Public
Print Name: _____

My commission expires:

RE

Davie Travel Center - Probable Civil Cost Estimate

Site Work

Description	Quantity	Unit	Unit Price	Total Price
Excavation	15700	CY	\$3.50	\$54,950.00
2" Asphalt - Type S-3 (2 Lifts)	63490	SY	\$7.00	\$444,430.00
Limerock Base Material - 8" depth	31745	SY	\$8.00	\$253,960.00
Compaction / Stabilization of Subgrade	31745	SY	\$2.25	\$71,426.25
Concrete Sidewalk	1709	SY	\$14.09	\$24,079.81
			Subtotal	\$848,846.06

Drainage

Description	Quantity	Unit	Unit Price	Total Price
Type E Inlet	25	EA	\$2,174.40	\$54,360.00
60" Dia. Manhole	2	EA	\$3,169.00	\$6,338.00
18" PVC	777	LF	\$54.57	\$42,400.89
18" RCP	1329	LF	\$32.25	\$42,860.25
24" RCP	227	LF	\$40.36	\$9,161.72
30" RCP	152	LF	\$50.23	\$7,634.96
36" RCP	329	LF	\$56.80	\$18,687.20
8" PVC RWL	207	LF	\$13.56	\$2,806.92
10" PVC RWL	332	LF	\$18.14	\$6,022.48
Cleanouts	9	EA	\$529.00	\$4,761.00
Concrete Head Wall	2	EA	\$2,115.00	\$4,230.00
			Subtotal	\$199,263.42

Water

Description	Quantity	Unit	Unit Price	Total Price
Connect to existing WM	1	EA	\$3,250.00	\$3,250.00
Fire Hydrant Assembly	3	EA	\$3,254.00	\$9,762.00
Fittings	6	EA	\$1,150.00	\$6,900.00
8" PVC Watermain (Domestic)	1094	LF	\$14.68	\$16,059.92
6" PVC Watermain (Domestic)	372	LF	\$10.80	\$4,017.60
1 1/2" Water Service	471	EA	\$7.20	\$3,391.20
2" Valve	5	EA	\$36.00	\$180.00
6" Valve	1	EA	\$1,254.00	\$1,254.00
8" Valve	1	EA	\$1,548.00	\$1,548.00
Automatic Flush Device and Meter	1	EA	\$450.00	\$450.00
6"x1 1/2" Saddle Tap	2	EA	\$65.00	\$130.00
8"x1 1/2" Saddle Tap	3	EA	\$85.00	\$255.00
8"x8" Tee	2	EA	\$145.29	\$290.58
10"x8" Tapping Sleeve	1	EA	\$3,200.00	\$3,200.00
Water Meter	5	EA	\$950.00	\$4,750.00
Bacteriological Sampling Point	2	EA	\$325.00	\$650.00
			Subtotal	\$56,088.30

Sanitary Sewer

Description	Quantity	Unit	Unit Price	Total Price
Sanitary Manhole 48"	8	EA	\$2,834.75	\$22,678.00
8" PVC Sanitary Sewer	1467	LF	22.15	\$32,494.05
4" Sanitary Sewer Lateral	5	EA	\$15.81	\$79.05
Cleanouts	10	EA	\$325.00	\$3,250.00
			Subtotal	\$58,501.10

Total \$1,162,698.88

Prices shown above are only estimates and the Engineer of Record will not be held responsible for any changes in the price of materials.

Prepared by:
Ross Engineering, Inc.

Robert J. Ross, P.E.
Florida P.E. # 59485
April 15, 2010

ROSS ENGINEERING, INC.
3325 S UNIVERSITY DR SUITE 111 • DAVIE, FL 33328
TEL: (954) 318-0624 • FAX: (954) 358-0190

DAVIE TRAVEL CENTER INC

Construction Draw Agreement

Total cash escrow: \$1,278,968.77

Available to Draw: \$1,162,698.88

Retention: \$116,269.88

Progress payments will be made providing a signed and sealed statement on completion from the Civil Engineer on record. Ross Engineering (Robert Ross), 3325 University Drive, Suite 111, Davie, Florida 33328 and the Town of Davie Engineer (Le Nguyen).

Draw Schedule

- 1: Drainage 50% completion - \$99,631.71
- 2: Drainage 100% completion - \$99,631.71
- 3: Sanitary Sewer 100% completion - \$58,501.10
- 4: Water 100% completion - \$56,088.30
- 5: Site Work 30% completion - \$254,653.82
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- 7: Site Work 100% completion - \$339,538.42



JMS CONSTRUCTION SERVICES, INC.
Davie Travel Center

Construction Services, Inc.

PAVEMENT, CURBING, SITE CONCRETE /PH2

- A 12" STAB. SUBGRADE / LBR 40
- B 6" APPROVED ROAD BASE / LIMEROCK / PRIMED
- C 10" S3 (S1 MOD.) / ASPHALT PAVE / 1ST LIFT
- D 10" S3 (S1 MOD.) / ASPHALT PAVE / 2ND LIFT

STABILIZE GRAVEL

- E 12" STAB. SUBGRADE / LBR 40
- F 6" APPROVED ROAD BASE / LIMEROCK

SITE CONCRETE & CURBING

- G 24" VALLEY GUTTER (MOD. MAAM) CURB
- H 6" X 8" X 18" STD. "D" CURB

- I STRIPING & SIGNAGE BY DESIGN / ALLOWANCE

PAVEMENT, CURBING, SITE CONCRETE / PH2

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		MONTH FIVE							MONTH SIX							MONTH SEVEN																					
		Week 17			Week 18			Week 19			Week 20			Week 21			Week 22			Week 23			Week 24			Week 25			Week 26			Week 27			Week 28		
		M	T	W	T	F	S	M	T	W	T	F	S	M	T	W	T	F	S	M	T	W	T	F	S	M	T	W	T	F	S	M	T	W	T	F	S
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